



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 447

## IN THE MATTER OF RUDY BANKS

### DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Rudy Banks (Mr. Banks) pursuant to '5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On March 12, 1992, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mr. Banks. The Commission has concluded its inquiry and, on May 14, 1992, found reasonable cause to believe that Mr. Banks violated G.L. c. 268A.

The Commission and Mr. Banks now agree to the following findings of fact and conclusions of law:

1. Mr. Banks was, during the time here relevant, a member of the Board of State Examiners of Plumbers and Gas Fitters (Board). As such, Mr. Banks was a state employee as that term is defined in G.L. c. 268A, §1. Mr. Banks has continued to serve on the Board to the present time.
2. The Board consists of nine members. It is responsible for regulating plumbers and gas fitters, which it does in part by administering licensing examinations. The Board is also responsible for promulgating a state plumbing code and granting variance requests from that code's requirements.
3. The Board has a seven-member Plumbing Subcommittee (Subcommittee) which specializes in plumbing issues only. The Subcommittee makes recommendations regarding various plumbing matters, including the granting of variance applications (from the State Plumbing Code) to the Board.
4. Mr. Banks is a master plumber. During the time here relevant, while sitting as a member of the Board, he has also served on the Subcommittee.
5. In early 1990, Napoli Pizza of Westfield, Massachusetts applied for a liquor license before the local licensing commission. That commission informed Napoli Pizza that it would have to install a handicapped restroom. In July 1990, Napoli Pizza applied for a building permit to install a unisex handicapped bathroom (by enlarging one of its two existing bathrooms). The Westfield Building Department informed Napoli Pizza that it would need a variance from the State Plumbing Code (248 CMR §2.10 19(h)), which requires a commercial establishment such as Napoli Pizza to have a bathroom for each sex. On July 25, 1990, the Subcommittee approved Napoli Pizza's variance application. Banks was present and voted in favor. On August 1, 1990, the Board voted to ratify the Subcommittee's action. Banks voted in favor.
6. By letter dated August 21, 1990, the Board notified Napoli Pizza and the Westfield plumbing inspector that on August 1, 1990, the Board voted to grant Napoli Pizza a variance from 248 CMR §2.10(19)(h) provided the unisex facility was kept locked.

7. Mr. Banks has a son Raymond who is also a master plumber. In early September 1990, Raymond applied to the Westfield plumbing inspector for a plumbing permit for the unisex bathroom at Napoli Pizza. At or about the same time, the Westfield plumbing inspector denied the permit, because he had not received a satisfactory written explanation from the Board as to the variance.

8. By letter dated September 5, 1990, the Westfield plumbing inspector wrote to the Board questioning the granting of the variance. He represented that he was being informed by the attorney for Napoli Pizza that the Board had voted to allow one unisex and one men's bathroom. The inspector insisted that the law requires that a commercial establishment maintain one men's bathroom and one women's bathroom, as well as the unisex handicapped bathroom.

9. In late September, 1990, Raymond reapplied for the plumbing permit for Napoli Pizza. At or about the same time, Raymond informed Mr. Banks of the problem he was having with the local plumbing inspector.

10. Thereafter, at its September 26, 1990 Subcommittee meeting, the Subcommittee voted to allow a variance based on the handicapped unisex bathroom being used by the public and the remaining bathroom being designated a unisex bathroom for employees. Mr. Banks voted in favor of the variance. On October 3, 1990, the Board approved the Subcommittee's decision to clarify the variance. Mr. Banks voted in favor.

11. On October 12, 1990, the Westfield plumbing inspector granted the permit to Napoli Pizza for construction of a unisex bathroom.

12. General Laws chapter 268A, §6 prohibits a state employee from participating as such in a particular matter in which to his knowledge a member of his immediate family has a financial interest.

13. The decisions by the Subcommittee and then the Board to ratify the Napoli Pizza variance were particular matters.<sup>1/</sup>

14. Mr. Banks participated<sup>2/</sup> in those particular matters by voting to approve the variance.

15. At the time he so voted, he was aware that his son would be doing the plumbing work which was the subject of the variance. Therefore, he knew that his son had a financial interest in those particular matters.

16. Therefore, by voting in late September and early October as a Board member to approve the Napoli Pizza variance, Mr. Banks participated as a state employee in particular matters in which to his knowledge an immediate family<sup>3/</sup> member had a financial interest, thereby violating '6.

In view of the foregoing violations of G.L. c. 268A by Mr. Banks, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mr. Banks:

1. that Mr. Banks pay to the Commission the sum of two hundred and fifty dollars (\$250.00) as a civil penalty for violating G.L. c. 268A, §6; and

2. that Mr. Banks waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

**Date: July 9, 1992**

<sup>1/</sup>"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts

for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

<sup>2/</sup>"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal

employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

<sup>3</sup>A son is an immediate family member. G.L. c. 268A, §1(e).